IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No. 25630 of 2003

Between:

Penta Udaya Sankar, S/o. Late Jugulayya,
R/o.Gunneswarnagar, Kasibugga Post, Srikakulam Dist.

..... PETITIONER

AND

1 The Superintendent of Police,
Srikakulam District, Srikakulam.
2 The Sub Inspector of Police, Kasibugga Police Station,
Kasibugga Post, Srikakulam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in opening the Rowdy Sheet No. 70, in the Kasibugga Police Station, Kasibugga, Srikakulam District as illegal and arbitrary and violative of Art. 14 and 21 of the Constitution of India, apart from the same being contrary to Police Standing Orders.

Counsel for the Petitioner : MR.M.VIJAY KUMAR

Counsel for the Respondents : GP FOR HOME

The Court made the following :

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ORDER :

The writ petition is filed seeking a Writ of Mandamus declaring the action of the second respondent in opening rowdy sheet against the petitioner in Police Station Kasibugga, Srikakulam District as illegal, arbitrary and contrary to Police Standing Orders.

The petitioner is a Ration Shop Dealer in Kasibugga Town of Srikakulam District. The second respondent herein falsely implicated the petitioner in two petty case Nos.185 and 186 of 2003 on the file of P.S. Kasibugga, due to political pressures. Keeping in view the activities of the petitioner, the second respondent opened rowdy sheet against the petitioner. It is his case that the second respondent opened rowdy sheet without any valid reason and contrary to Order 742 of A.P. Police Standing Orders.

A counter affidavit is filed on behalf of respondents. It is stated that the petitioner was involved in several criminal cases, some ended in acquittal and some cases are pending trial. It is also stated that in view of involvement of the petitioner in fresh cases, the rowdy sheet against the petitioner was re-opened in accordance with A.P.Police Standing Orders to keep a watch over the unlawful and rowdy activities of the petitioner.

Though interlocutory application is listed before this Court, as the question raised herein is squarely covered by the judgment of this Court in S. SATYANARAYANA v. STATE OF A.P., the writ petition is being disposed of finally directing the second respondent to consider the request of the petitioner for closing rowdy sheet following the principles laid down in SATYANARAYANA'S case (supra), which are as under.

i. A mere conviction or convictions cannot be thumb rule for opening history sheet or rowdy sheet though history sheet can be opened even without conviction for the limited purpose of watching a person discreetly.

ii. At the time of opening a history sheet or rowdy sheet a competent officer has to apply mind taking into

consideration the social background the proceedings in the criminal trial if a person is convicted and all other relevant material before passing orders for opening history sheet or rowdy sheet.

iii. A history sheet/rowdy sheet is retained for the period of two years only unless it is ordered to be closed by the Superintendent of Police earlier than two years. During the initial period of two years, the history sheeter or rowdy sheeter is entitled to request the concerned police officer to close the history sheet or rowdy sheet which has to be considered by the police officer in an objective manner.

iv. While passing orders for retention of history sheet for another year more, the competent Sub-Divisional Police Officer has to take into consideration the various factors, to wit, surveillance reports, the crime history with reference to the breach of peace of society during the preceding year, the social and political background of the person etc. If there is a preponderance of opinion among the surveillance officers that the person did not come up for any adverse notice and leading a blemishless family life it is a strong circumstance to order for closure of the history sheet or rowdy sheet.

v. When an order is passed by the competent police officer for retention of the history sheet by simply endorsing on the report/letter of the S.H.O. a single line order, that by itself cannot be a ground to continue the rowdy sheet.

vi. Any order passed by the Sub-Divisional Police Officer shall have to be supported by reasons. The reasons need not be communicated but to be recorded.

vii. The orders for opening or retention of history sheet/rowdy sheet are passed under the administrative instructions/guidelines. If such an order is challenged, the competent authority has to place the reasons before the Court which justify retention of history sheet/rowdy sheet. Further, it is always better for the Police Officer to record his own reasons for retention/opening of the history sheet/rowdy sheet.

viii. In the event as mentioned in conclusion 4.7 it is always open to the Court of judicial review to direct the Sub-Divisional Police Officer to reconsider his decision and pass appropriate orders. But whatever be the events in the guise of opening/retention of history sheet a person's liberty, right to privacy and other freedoms under Article 19 of the Constitution of India cannot be infringed under any circumstances.

ix. It is to be remembered that any order of the competent police officer which is not supported by reasons is itself

unreasonable and arbitrary and can be termed as mala fide in the sense that it is contrary to the purpose for which the Police Officer is authorised under relevant Police Standing Orders. Hence, if the Court comes to the conclusion that the order of the Sub-Divisional Police Officer is contrary to the purpose for which surveillance is authorised, the action shall be set at naught forthwith on the principle that what is unreasonable and unfair is arbitrary and such arbitrary exercise of power amounts to exercising, the power mala fide.

The petitioner is, however, at liberty to approach the second respondent by filing appropriate representation for closing rowdy sheet, if the same is still continued. If the rowdy sheet opened against the petitioner is already closed, there is no necessity to the petitioner to make further representation.

The writ petition is accordingly disposed of. No costs.

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(V.V.S. RAO, J.)

06-07-2005.

Msr.

To

1 The Superintendent of Police,
Srikakulam District, Srikakulam.
2 The Sub Inspector of Police, Kasibugga Police Station,

Kasibugga Post, Srikakulam District.

3 2 CCs to Government Pleader for Home,

High Court Buildings, Hyderabad.

4 2 CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

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(Msr)